No. 92-1251

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1992

ROBERT LEE ZIMMERMAN,

Petitioner,

vs.

NORTHWESTERN MUTUAL
LIFE INSURANCE COMPANY
OF MILWAUKEE, ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

WILLIAM ALAN BORDNER
737 Bishop Street, #3100
Honolulu, HI 96813
(808) 523-9833

Attorney for Respondents
THE NORTHWESTERN MUTUAL
LIFE INSURANCE COMPANY
and BISHOP SQUARE MANAGE-
MENT INC.

Of Counsel:
BURKE, SAKAI, McPHEETERS
& BORDNER

February 10, 1993

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STATEMENT OF RELATED CORPORATIONS

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY has no parent company. The following are either subsidiaries or affiliates:

MGIC Investment Corporation

The Grand Avenue Corporation

Regis Group, Inc.

Mall Management Associates nka MMI Realty Services, Inc. dba Bishop Square Management, Inc. has no parent company, subsidiaries or affiliates.

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY and MALL MANAGEMENT ASSOCIATES nka MMI REALTY SERVICES, INC., dba BISHOP SQUARE MANAGEMENT, INC., hereinafter collectively referred to as "THE PRIVATE DEFENDANTS" oppose the Petition for Writ of Certiorari

pursuant to which Petitioner seeks review of the Judgment of the Court of Appeals of the Ninth Circuit affirming the United States District Court for the District of Hawaii's Judgment entered in favor of Respondents.

OPINIONS BELOW

The decisions of the United States District Court for the District of Hawaii and the United States Court of Appeals for the Ninth Circuit have not been officially reported but are set forth in the Appendix to the Petition for Writ of Certiorari.

The Judgment of the Court of Appeals was entered on August 21, 1992, Petitioner's App. 63-64, and the Petition for Rehearing was denied on October 20, 1992 (Petitioner's App. 61-62). This Court has jurisdiction under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether or not the Ninth Circuit Court of Appeals correctly affirmed the Judgment entered by the United States District Court for the District of Hawaii in favor of Respondents and against Petitioner. More particularly, the issues may be stated as follows:

1. Did the Ninth Circuit properly rule that there was no State action or constitutional violation under 42 U.S.C. § 1983?

2. Did the Ninth Circuit properly rule that Zimmerman is not a member of a class protected by 42 U.S.C. § 1985?

3. Did the Ninth Circuit properly conclude that it was not an abuse of discretion for the District

Court to have denied Mr. Zimmerman's Motion to Amend Original Complaint?

4. Did the Ninth Circuit correctly determine that the District Court did not abuse its discretion by denying Mr. Zimmerman's Motion to Compel Discovery?

5. Did the Ninth Circuit correctly determine that the District Court did not abuse its discretion by refusing to recuse the District Court Judge and Magistrate?

STATEMENT OF THE CASE

Sup. Ct. R. 15 requires that Respondents point out any perceived misstatements in the Petition in their brief in opposition. Mr. Zimmerman's Petition, however, consists of conclusory argument and his recitation of facts bears no resemblance to the

record that the District Court had before it at the time it ruled on the Private Defendants' Motion for Partial Summary Judgment. The following summary sets forth the procedural background of the case and the uncontradicted record before the District Court.

A. Procedural Background

The Complaint in this matter was filed on June 21, 1989. (R. 1) The Complaint was brought against The Private Defendants as well as the Mayor and other City Defendants alleging violation of civil rights under 42 U.S.C. § 1983 and conspirary to violate the constitutional rights under 42 U.S.C. § 1985. (R. 1:1-18) In addition, various pendent State tort and constitutional claims were

asserted. (R. 1:1-18) Mr. Zimmerman was initially represented by counsel who completed certain discovery, including requests for answers to interrogatories and production of documents on the defendants. The case was pending for more than one year before The Private Defendants filed a Motion for Partial Summary Judgment as to the Federal Claims on July 27, 1990. (R. 36:1-47) Mr. Zimmerman filed a Counter-Motion for Partial Summary Judgment on September 5, 1990. (R. 40:1-29; 39:1-43) The arguments on the Motions were held on September 24, 1990 at which time The Private Defendants' Motion was granted. (R. 49) Subsequently, the District Court also granted the City Defendants' Motion for Partial Summary

Judgment and dismissed the pendent State claims. (R. 148) In addition to submitting his own Counter-Motion for Partial Summary Judgment and thereby acknowledging that there remained no issues of fact to be resolved, Mr. Zimmerman at no time submitted an affidavit under Fed. R. Civ. P. 56(f), indicating that additional time for discovery was necessary in order to submit opposing affidavits. Moreover, Mr. Zimmerman did not, in his argument at any time, contend that he needed to do additional deposition discovery. It was only after the partial summary judgment had been awarded to The Private Defendants that Mr. Zimmerman first contended that additional discovery was necessary.

B. Undisputed Facts Presented To The District Court

The undisputed facts as shown by appropriate affidavits and interrogatory answers demonstrated that the Bishop Square Complex is located in downtown Honolulu and includes the entire block bordered by Bishop Street, King Street, Alakea Street and Hotel Street. (R. 36:2) The Hotel Street/Alakea Street corner is occupied by street level commercial space and a multi-story above ground parking garage. The Bishop Street/King Street corner is occupied by a multi-level underground parking structure, the roof of which is at street level. The underground parking structure roof has been landscaped with plantings and numerous pools

which border the walkways leading from the Bishop Street/King Street corner to the main entrances of the office towers and the ground floor commercial spaces. The Bishop Street/King Street corner of the Bishop Square Complex is known as Tamarind Park. (R. 36:3)

The Bishop Street/King Street corner of the block had never been devoted to public assembly or public purposes historically, and it was not until the last phase of the construction of the Bishop Square Complex in 1983 that the public had general access to the corner. (R. 36:3)

The entire Bishop Square Complex, on July 22, 1988, was owned by Northwestern which paid the usual property taxes for the entire area

including the street level portion referred to as Tamarind Park. (R. 36:3) The private nature of the complex, including Tamarind Park, was clearly indicated through a series of markers embedded in the concrete walkways at the perimeter of the Bishop Square Complex. (R. 36:4) While the public had access through Tamarind Park to the commercial, office and retail tenants located in the Bishop Square Complex, Northwestern had at no time dedicated Tamarind Park or any portion of the Bishop Square Complex to open space or public recreational uses. (R. 36:4)

Bishop Square, pursuant to a contract with Northwestern, managed the day to day operation of the Bishop Square Complex. (R. 36:4) Among its

responsibilities was the enforcement of the Regulations Pertaining To The Use Of The Tamarind Park/Bishop Square. (R. 36:4) While the public had access to Tamarind Park, regulations as to the public's use of the park had been developed and enforced by Northwestrn and Bishop Square to ensure that Tamarind Park projected an atmosphere which would enhance the value of the commercial and office spaces in the Bishop Square Complex as well as to portray the relaxed, quiet, carefree image deemed by the owner to be suitable for Tamarind Park. (R. 36:4)

Distributing handouts was prohibited at Tamarind Park. This rule was intended to minimize potential annoyance to persons

entering the Bishop Square Complex, reduce the potential for disorder, minimize litter, and maintain a controlled, carefree and relaxed environment. (R. 36:5) The rule against distributing handouts was non-discriminatory, and precluded all distribution on the privately owned premises. (R. 36:5) The rule was applied even-handedly to all those who were observed distributing handbills at Tamarind Park. (R. 36:5)

Tamarind Park, on July 22, 1988, was controlled, maintained and managed exclusively by Northwestern and Bishop Square. (R. 36:5) The City did not participate financially or otherwise in any respect concerning creation of rules and regulations for the premises or in its maintenance or

management. (R. 36:5) Tamarind Park was not a "public park" as defined in the Revised Ordinances of Honolulu, Art. 14, Sec. 13-14.1 (1983 ed.). (Respondents App. at A-3) (R. 36:5).

Moreover, the undisputed facts as demonstrated through appropriate affidavits submitted in support of Respondents' Motion for Partial Summary Judgment clearly showed that groups and organizations were allowed to use Tamarind Park for special events if an application were submitted describing the activity as being consistent with the regulations and compatible with use of the area by Bishop Square tenants and those transacting business with the tenants. (R. 45) Use of the Bishop Square Complex was limited to

charitable or non-profit groups and those representing specific non-partisan community interests. The regulations pertaining to the use of Tamarind Park/Bishop Square had been strictly adhered to since the park's opening in 1983. Neither handbilling nor political group activity has been permitted in Tamarind Park at any time. Since 1983, many special events have taken place in Tamarind Park. Many of these were sponsored by the City and County of Honolulu. Many others were sponsored by private groups and individuals having absolutely no connection with the City and County of Honolulu. Mr. Zimmerman was free to apply to Bishop Square for permission to sponsor special events at Tamarind Park just as the City and

County of Honolulu and other groups and organizations and individuals have applied for permission to sponsor special events. The Respondents do not co-sponsor events taking place at Tamarind Park. Bishop Square's role on behalf of Northwestern was merely to review and approve applications which were consistent with the policies of maintaining the desired environment consistent with the regulations and compatible with the use of the area by Bishop Square tenants and those transacting business with the tenants. The regulations against distributing handbills were not aimed at political candidates but were applied across the board to distribution of commercial literature and promotional literature. The

Respondents had no special arrangements with the City and County of Honolulu. (R. 45)

The arrest of Mr. Zimmerman on July 22, 1988 was made because of Mr. Zimmerman's refusing to stop distributing handbills and contravention of regulations applicable to the use of property. The arrest was not pre-arranged, planned or coordinated but accomplished in the only manner available to protect the owner's property rights. (R. 45)

Banners are permitted in connection with the approved special events at Tamarind Park. The only requirement is that Bishop Square approve the banners as being tasteful and professional. Mr. Zimmerman was

never barred from Tamarind Park. He has, at all times, been free to apply to sponsor special events at Tamarind Park and use tasteful, professional banners. He has free access to the premises to talk to whomever he wishes on Bishop Square Complex premises. (R. 45)

In 1988, Zimmerman was a candidate for the United States Senate in the Democratic Primary Election. (R. 36:5) He was running for the seat then held by Senator Matsunaga. (R. 36:5) Zimmerman had become a resident of the State of Hawaii in 1986 after moving from New York. (R. 36:5) He believed that Senator Matsunaga would win the Democratic Primary but was counting on Senator Matsunaga's passing away before the general

election. (R. 36:5) He believed that if he came in second in the primary, he automatically would be placed on the general election ballot as the Democratic nominee for the Senate if Senator Matsunaga passed away before the general election. (R. 36:6)

In the spring and summer of 1988, Zimmerman or his campaign workers came upon the Bishop Square Complex premises to distribute handouts or sell materials. (R. 36:6) On at least eight occasions, Zimmerman or his campaign workers had been present on the Bishop Square Complex premises distributing handouts in violation of Tamarind Park Regulations. They were asked to comply with the rules and regulations or to leave the premises. (R. 36:6)

On two occasions, written trespass warnings were issued by Bishop Square. (R. 36:6-7) One warning was issued to Zimmerman on April 15, 1988 and the second warning to Michael Secter, the campaign manager for Citizens for Zimmerman. Secter's warning was issued on July 1, 1988. (R. 36-7)

Zimmerman, along with several campaign workers, again appeared on the Bishop Square premises on July 22, 1988. (R. 36:7) At that time, Zimmerman walked through the Tamarind Park area distributing handouts. He approached George Krater, the head of security, who was in the park area. (R. 36:7) Mr. Krater asked Zimmerman to stop distributing his handouts or to move to the nearby public

sidewalks. (R. 36:7) Zimmerman refused. (R. 36:7) The police were then summoned and a "citizen's arrest" was made by security officer Charles Hill, an employee of Bishop Square. (R. 36:7) The police took custody of Zimmerman and Zimmerman was charged with criminal trespass. (R. 36:7) Secter voluntarily left the premises and was not arrested. (R. 36:7)

SUMMARY OF THE ARGUMENT

The Circuit Court correctly ruled that there were no genuine issues of fact presented to the District Court and that the Private Defendants were entitled to judgment as a matter of law. The Court correctly found that the property in question, The Bishop Square Complex/Tamarind Park, was not a

public forum and therefore it did not implicate Petitioner's First Amendment rights. The Court correctly analogized the situation to those cases decided by this Court in which anti-handbilling regulations applicable to private shopping centers were upheld notwithstanding First Amendment challenge.

The Circuit Court also correctly found that no genuine issue of material fact was presented with regard to Petitioner's assertion that all or a portion of the Bishop Square Complex had at any time been dedicated to public use.

Moreover, the Circuit Court correctly determined that no genuine issues of material fact existed and that the Private Defendants had

probable cause to make a citizen's arrest. Even if the citizen's arrest constituted some type of state action, there was no evidence of a constitutional violation given the private nature of the property and the fact that it was not a public forum.

The Circuit Court also correctly determined that Petitioner's 42 U.S.C. § 1985 conspiracy claims failed as a matter of law as Petitioner created no genuine issue of material fact to show class based invidious discrimination.

The Circuit Court also properly concluded that the District Court had not abused its discretion in denying Petitioner's untimely request for discovery following the District Court's granting the Private

Defendants' Motion for Partial Summary Judgment. Also, the Circuit Court properly ruled that Mr. Zimmerman had abandoned the issue of recusal, on appeal, when he presented no argument on the issue. Moreover, the Circuit Court appropriately found that, upon resolution of all Federal claims, the District Court properly dismissed for lack of jurisdiction Mr. Zimmerman's pendent State constitutional tort claims.

The Circuit Court's decision is not in conflict with other decisions of this Court, other Circuit Courts, or the Hawaii Supreme Court and therefore the Petition should be denied.

ARGUMENT

The petition should be denied because the Ninth Circuit's decision affirming the District Court's disposition of the case was correct, and there is no dispute or conflict between prior decisions of this Court, other Circuit Courts of Appeal or the Hawaii Supreme Court which would justify this Court exercising its discretion to review the Ninth Circuit's decision.

A. There is No Conflict Between The Decision of The Court of Appeals and The Decisions of This Court.

The undisputed facts in the case showed that the property in question, the Bishop Square Complex, was privately owned. Therefore, the Ninth Circuit appropriately relied on

this Court's decisions holding that the public nature of private business premises does not require burdening such property with First Amendment protection reserved for government owned property. See Lloyd Corporation Ltd. v. Tanner, 407 U.S. 551, (1972) and Hudgens v. NLRB, 424 U.S. 507 (1976). Mr. Zimmerman's assertion that the Ninth Circuit's decision is contrary to prior decisions of this Court is simply untrue. Mr. Zimmerman cites Hague v. Committee for Industrial Organization, 307 U.S. 496 (1939); International Society for Krishna Consciousness Inc. v. Lee, 112 S. Ct. 2701 (1992); United States v. Grace, 461 U.S. 171 (1983), and Perry Education Assn. v. Perry Local Educator's Assn., 460 U.S. 37 (1983).

All of these cases involved regulation of public property or enforcement of City ordinances or other executive orders. For example, Hague dealt with a City ordinance forbidding the leasing of any halls without a permit from the Chief of Police for a public meeting. International Society for Krishna Consciousness Inc. v. Lee dealt with the question of "... whether an airport terminal operated by a public authority is a public forum and whether a regulation prohibiting solicitation in the interior of an airport terminal violates the First Amendment." Lee, 112 S. Ct. at 2703. In United States v. Grace, the Court addressed the First Amendment implications of a Federal statute which had been used to

prohibit leafletting on the publicly owned sidewalks and stairways in front of the United States Supreme Court. In Perry Education Assn. v. Perry Local Educators' Assn., the Court dealt with First Amendment issues arising out of the use of a public school mail system. None of the other cases cited by Petitioner involved privately owned and regulated property.

In Evans v. Newton, 382 U.S. 296 (1966), a tract of land was willed to the City, as a park for white people, to be controlled by a white Board of Managers. After the city desegregated the park, the individual managers brought suit in state court seeking the city's removal as trustee and the appointment of private

trustees to enforce the racial limitations of the Will. The Court held that the services rendered by that park were municipal in nature, based on its finding that the park had traditionally been under municipal control and maintenance. In fact, the Court noted that the Park had always been swept, manicured, watered, patrolled, and maintained by the city as a public facility, even after the removal of the city as trustee. The court concluded that the municipality remained entwined in the management or control of the park, thus remaining subject to the restraints of the Fourteenth Amendment.

In International Society for Krishna Consciousness, Inc. v. Lee, Justice Rehnquist specifically noted

that First Amendment analysis in relation to publicly owned property is irrelevant to privately owned property: "The development of privately owned parks that ban speech activity would not change the public fora status of publicly held parks. But the reverse is also true. The practices of privately held transportation centers do not bear on the government's regulatory authority over a publicly owned airport." Lee, 112 S. Ct. at 2707.

In United States v. Kokinda, 497 U.S. 720, 110 S. Ct. 3115 (1990), Justice O'Connor distinguished publicly owned from privately owned property in connection with a First Amendment analysis relating to a federally owned postal sidewalk.

Justice O'Connor stated:

> The Government, even when acting in its proprietary capacity, does not enjoy absolute freedom from First Amendment constraints, as does a private business ....

Id., 497 U.S. at ____, 110 S. Ct. at 3119.

There is no inconsistency between these decisions cited by Mr. Zimmerman and the Circuit Court's disposition of this case. The Circuit Court correctly followed the most closely analogous Supreme Court decisions, namely those dealing with First Amendment issues in the context of privately owned shopping centers.

B. There is No Conflict Between The Circuit Court's Decision and The Decision of Any Other United States Court of Appeals on The Same Matter

The argument set forth in the Petition at pages 31 through 37

discloses no conflict between the decisions of any other Circuit Courts and the decision by the Ninth Circuit in this case. The only cases cited by Mr. Zimmerman, Hines v. Metropolitan Government of Nashville and Davidson County, 667 F.2d 549 (6th Cir. 1982) and Edwards v. Maryland State Farm and Agricultural Society, Inc., 628 F.2d 282 (4th Cir. 1980), dealt exclusively with First Amendment issues arising in the context of State sponsored and run farm fairs. These cases have nothing to do with private parks. None of the factual materials cited by Mr. Zimmerman in his arguments on pages 34 through 37 were supported by proper affidavit or otherwise contained in the record upon which the Respondents' Motion for Partial Summary Judgment

were decided by the District Court.

C. The Ninth Circuit Decision Does Not Conflict With Any of This Court's Decisions Applying A Public Function Analysis to 1983 Claims

Mr. Zimmerman, at pages 38-39 of the Petition cites Terry v. Adams, 345 U.S. 461 (1953) and Marsh v. Alabama, 326 U.S. 501 (1946) as support for his argument that the Circuit Court's decision in this case is in conflict with Supreme Court decisions applying a public function doctrine. Terry dealt with racial discrimination in voting practices in Texas and Marsh v. Alabama, of course, is the company town case which was aptly distinguished by this Court in its shopping center cases, Hudgens v. NLRB, 424 U.S. 507 (1976) and Lloyd v. Tanner, 47 U.S. 551 (1972). Mr.

Zimmerman presented no facts to the District Court at the time of the hearing on Respondents' Motion for Partial Summary Judgment which in any way demonstrated that any governmental body had transferred some public function to the Private Defendants or that the activity being performed by the Private Defendants was "traditionally the exclusive prerogative of the State." Randall-Baker v. Kohn, 457 U.S. 830, 842 (1982). Public function analysis centers upon whether the private entity has exercised some power delegated to it by the Government which is traditionally associated with sovereignty. Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974).

Tamarind Park, contrary to Mr. Zimmerman's assertion, was never dedicated to public use and has never been operated in a municipal or public way. The uncontroverted facts show that it has, since its opening in 1983, been managed under the rules and regulations which were applied to Mr. Zimmerman. This Court has clearly stated in Lloyd Corporation, 407 U.S. at 569, that property does not "lose its private character merely because the public is generally invited to use it for designated purposes." The Circuit Court correctly noted that, even in cases of government owned property such as postal walkways, being open to the public does not by itself establish that such areas must be treated as traditional public fora

under the First Amendment. See Petitioner's Appendix at 70-71 (citing United States v. Kokinda, 110 S. Ct. 3115, 3121 (1990)).

D. The Circuit Court's Decision Does Not Conflict With Any Hawaii Supreme Court Decision With Regard To a Federal Question

In State v. Furuyama, 64 Haw. 109, 637 P.2d 1095 (1981), the Hawaii Supreme Court reviewed the procedures followed by police in making arrests for promoting pornography. Honolulu Police officers dressed as Japanese tourists purchased suspected pornographic materials and then made arrests as the sale and purchase were witnessed by a "partner or assisting officer", State v. Furuyama at 64 Haw. at 112-113. The Furuyama case had nothing to do with citizen's arrests

such as that effected in this case. Moreover, as the Circuit Court correctly found, "Zimmerman presented no evidence demonstrating that probable cause was lacking. Because the arresting party had probable cause to believe that Zimmerman was trespassing, the warrantless arrest did not constitute an infrigement upon any constitutional protected right." See Petitioner's Appendix at 77.

Zimmerman's reference to Estes v. Kapiolani Women's and Children's Medical Center, 71 Haw. 190, 787 P.2d 216, (1990) is also misplaced. In Estes, the Hawaii Supreme Court considered the First Amendment rights of persons entering the Kapiolani Hospital premises to distribute anti-abortion leaflets and to

otherwise express their views. The leafleteers were warned by police that they would be arrested for trespass. The police had been summoned by the hospital after the leafleteers, who had not obtained hospital permission, refused to obey security guards' instructions to leave. In affirming the lower court's dismissal of the injunction action, the Hawaii Supreme Court, in interpreting the Freedom of Speech provisions of the Hawaii Constitution, Article I, Section 4, stated, "Although this provision is not so narrowly read as to preclude only legislative enactments which abridge free speech, still, '[i]t is, of course, a commonplace that the Constitution guarantee of free speech is guaranteed only against the

abridgement by government.' Hudgens v. NLRB, 424 U.S. 507, 513 (1976)." 71 Haw. at 192-3. The Court then analyzed numerous Federal decisions with regard to the type of conduct or circumstances which constitutes State or governmental action in the context of free speech. The Hawaii Supreme Court held that Kapiolani Hospital was not a State agency and that police involvement in enforcing the hospital's rights against trespass did not convert the hospital's actions into State actions. 71 Haw. at 193-194. It is clear from the Court's analysis in Estes that the Hawaii Constitution proscribes only government action, State action, and not private action.

In Estes, the leafleteers also argued that the Hawaii court should interpret the Hawaii Constitution in a manner similar to the California Supreme Court in Robins v. Pruneyard Shopping Center, 23 Cal. 3d 899, 153 Cal. Rptr. 854, 592 P.2d 341 (1979). The Hawaii Court rejected Pruneyard stating:

> Contrary to the framers of the California Constitution, the framers of our Hawaii Constitution adopted language nearly identical to that of the First Amendment for the protection of free speech. In construing Article I, Section 4 of our Hawaii Constitution, we adopt holdings of the Federal cases construing the First Amendment rights of free speech of our U.S. Constitution which would prohibit appellants from distributing leaflets or otherwise express anti-abortion views on the premises of the hospital.

71 Haw. at 197.

The Hawaii Court endorsed the analysis set forth in Lloyd and Hudgens and rejected application of Marsh to the circumstances presented. Mr. Zimmerman has not demonstrated any conflict between decisions of Federal constitutional law by the Hawaii Supreme Court and the decision on Federal issues by the Circuit Court in this case.

E. Questions Concerning Mr. Zimmerman's Attempt to Amend the Pleadings, Recuse the U.S. District Court Judge and Magistrate, and Seek Review of the Court's Dismissal of Pendent State Claims Do Not Raise Issues of Special Interest or Importance and the Circuit Court's Disposition of These Matters Is Not In Conflict With This Court's Or Any Other Court's Decisions

Mr. Zimmerman's request for review of the Circuit Court's decision

relating to his attempt to amend pleadings, recuse the District Court Judge and Magistrate and his seeking review of the dismissal of pendent State claims does not raise issues of special interest or importance and should be rejected. The Circuit Court reviewed the District Court's decision for abuse of discretion and Mr. Zimmerman cites no cases which conflict with the Circuit Court's decision. (See Petition at 46-60). Absent any showing of conflicting decisions The Private Defendants respectfully assert that review by this Court would be inappropriate.

CONCLUSION

Respondents respectfully request that the Court deny the Petition for Writ of Certiorari.

DATED: Honolulu, Hawaii, February 10, 1993.

WILLIAM ALAN BORDNER

Attorney for Respondents
THE NORTHWESTERN MUTUAL
LIFE INSURANCE COMPANY and
MALL MANAGEMENT ASSOCIATES

APPENDIX A

No. 92-1251

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OCTOBER TERM, 1992

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REVISED ORDINANCES OF

HONOLULU, Art. 14

Sec. 13-14.1 (1983 ed.)

THE REVISED ORDINANCES OF HONOLULU 1978 (1983 Edition)

Comprising the Ordinances of the
CITY AND COUNTY OF HONOLULU,
Ordinance No. 3508 through Ordinance No. 83-73
December 31, 1983

PUBLISHED BY AUTHORITY

Effective

MAYOR
EILEEN R. ANDERSON

COUNCIL
PATSY T. MINK, *Chair*

GEORGE G. AKAHANE
MARILYN BORNHORST
LEEDS-WAI DOO
WELCOME S. FAWCETT
DAVID KAHAHU
TOSHIKI MATSUMOTO
TONY NARVAEZ
RUDY PACARRO

Article 13. Sound Vehicles.

(REPEALED by Ord. No. 79-74. See Traffic Code of the City and County of Honolulu 1976, Sec. 15-19.43)

Article 14. Rules And Regulations Relative To The Use Of Public Parks, Playgrounds, Beaches And Other Public Areas.

Sec. 13-14.1. "Public Park" Defined.

"Public park" shall include any park, park roadway, playground, athletic field, beach, beach right-of-way, tennis court, golf course, swimming pool, and other recreation areas and facilities under the control, maintenance and management of the Department of Parks and Recreation. (Sec. 13-18.1, R.O. 1969; Am. Ord. 3920)

Sec. 13-14.2. Park Rules And Regulations.

(a) Within the limits of any public park, it shall be unlawful for any person to:

(1) Willfully or intentionally destroy, damage or injure any property.

(2) Climb onto any tree, except those designated for climbing, or to climb onto any wall, fence, shelter, building, statue, monument or other structure, excluding play apparatus.

(3) Swim, bathe, wade in, or pollute the water of any ornamental pool or fountain.

(4) Throw or dispose of any refuse or waste material, except in receptacles placed therein.

(5) Kindle, build, maintain or use any fire, other than in a grill or brazier.

(6) Annoy, molest, kill, wound, chase, shoot or throw missiles at any animal or bird.

(7) Distribute, post or place any commercial handbill or circular, notice, or other advertising device or matter, except as permitted by the terms of any agreement relating to the use of park property.

(8) Use any surfboard or devices or materials with jagged or rough ends and edges, which are dangerous to surfers, swimmers, or bathers.

(9) Construct or fabricate surfboards.